

General Information Letter: Residency of a trust is determined at the time it becomes irrevocable.

July 30, 2007

Dear:

This is in response to your letter dated June 25, 2007 in which you request information as to the Illinois filing requirements of a certain trust. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

We are writing on behalf of our client, who wishes to remain anonymous. Our client is a fiduciary (an irrevocable trust) that was set up back in 1975 or so. The following is a brief background that pertains to the settlement of the above trust to help you determine the course of action to be taken with regards to Illinois fiduciary filings.

Back in 1975, a resident of Israel sent some money to his relative, who resided in Illinois, to be put in the trust for the benefit of the resident's of Israel daughter. The Illinois relative became a trustee for the trust and the trust filed fiduciary tax returns in the state of Illinois. The beneficiary of the trust was (and remains) the daughter of the Israeli citizen, who at this point still resides in Israel. Later, there was a change in trustee to a California resident, and the previous Illinois trustee resigned. The trust continued to file in Illinois and also filed fiduciary tax returns in California. Under California law, since the new trustee was a California resident, such state filings were required of the trust.

In 2006 the California trustee resigned, and the new trustee, who is a foreign person and does not reside in the United States, started on duty. We have been carefully reading the instructions to the Form IL-1041 to determine whether the named trust should continue filing in Illinois. We understand, that since there is no Illinois-resident trustees, no Illinois resident beneficiaries, the estate of the decedent was not domiciled in Illinois at the time of decedent's death, the trust was not created by a will of a decedent who at his death was domiciled in Illinois, and the grantor of the trust was not domiciled in Illinois at the time the trust became irrevocable, the trust, technically, is not an Illinois resident. The trust does not have any business income, and never had; the trust only has a single brokerage account managed by the trustee. The brokerage account consists of marketable securities and nothing else. According to the instruction to Form IL-1041, interest and dividend income received by a nonresident trust is not allocable to Illinois.

Our inquiry is thus as follows: is the above described trust required to file a fiduciary income tax return in Illinois or can the filing be discontinued? We believe that the trust is not an Illinois resident, does not have any Illinois source income or any other income attributable to Illinois and should not be subject to Illinois taxation.

RULING

Under the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*), residents of Illinois pay tax on the entire amount of their base income and nonresidents pay tax only that portion of base income that is allocable to Illinois. See 35 ILCS 5/201, 5/202, 5/203 and 5/301. Under IITA Section 502(a), an income tax return must be filed by any person liable for tax imposed under the IITA, plus a resident must file an income tax return regardless of any liability under the IITA if the resident is required to file a federal income tax return. 35 ILCS 5/502(a).

Section 1501(a)(20) of the IITA defines the term "resident." 35 ILCS 5/1501(a)(20). Under this section, a trust is considered an Illinois resident in two situations:

- (1) a trust created by a will of a decedent who at his death was domiciled in Illinois, and
- (2) an irrevocable trust, the grantor of which was domiciled in Illinois at the time the trust became irrevocable.

A trust's status as a resident or nonresident is not based upon the residence of the trustee or beneficiaries. A trust that does not fall within either of the above situations is a nonresident under the IITA and thus pays tax only on its income allocable to Illinois. Under IITA section 301(c)(2)(A), nonbusiness interest and dividend income of a nonresident trust is not allocable to Illinois.

Based on the information stated in your letter, the trust is not liable for Illinois income tax and is not required to file an Illinois return.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)